

Internal Revenue Service
memorandum

CC:TL-N-1047-89

Br2:RLOsborne

date: DEC 02 1988

to: District Counsel, Dallas CC:DAL
Attention: John S. Repsis

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: Proper Agent for Execution of Form 872 -- [REDACTED]

We hereby respond to your November 4, 1988, request for technical advice.

ISSUES

Who should sign Forms 872 for [REDACTED] and Subsidiaries for taxable years [REDACTED] through [REDACTED], in light of changes in [REDACTED]'s corporate structure in [REDACTED]?

FACTS

We understand that prior to the end of [REDACTED], [REDACTED], a Canadian Corporation, held a minority equity position in [REDACTED], a U.S. corporation. The remaining [REDACTED] shares were held by the public. [REDACTED] owned subsidiaries, with which it filed consolidated U.S. tax returns. In late [REDACTED], [REDACTED] purchased the public shareholders' stock in [REDACTED]. [REDACTED] was a partnership in which [REDACTED] and [REDACTED] each indirectly held a [REDACTED] interest.

In [REDACTED], [REDACTED] and [REDACTED] formed [REDACTED], which formed a temporary subsidiary. The [REDACTED] transferred all its assets and liabilities to [REDACTED]. In [REDACTED], [REDACTED]'s subsidiary was merged into [REDACTED]. [REDACTED] survived as [REDACTED]'s new subsidiary.

Currently, [REDACTED] and its subsidiaries (the "[REDACTED]") are under audit for the taxable years ending [REDACTED] through [REDACTED]. The statute of limitations on assessment for these years has been extended by Forms 872 to various dates in [REDACTED]. You have asked who should sign any further Forms 872.

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DISCUSSION

Treas. Reg. § 1.1502-77(a) provides that a group's common parent shall be the group's sole agent for waiver purposes with respect to the group's consolidated return year. Accordingly, if a waiver relating to a given year is needed subsequently, after a restructuring, the entity which was previously the common parent continues to act as agent for the signing of the waiver. This is the case even if the former common parent is no longer the common parent at the time it signs the waiver.

The general rule set forth above does not apply, however, where the restructuring results in the termination of the existence of the common parent. In that event, Reg. § 1.1502-77(d) provides that the new agent for the group will be either (1) a member designated by the old common parent prior to the termination of its existence, or (2) a member designated by the remaining members of the group if the old common parent failed to make a designation. That regulation further provides that if neither the old common parent nor the remaining members designate a new agent, the district director must deal with the members on an individual basis.

Finally, Southern Pacific Co. v. Comm'r, 84 T.C. 375 (1985), provides another rule for reverse acquisitions under Reg. § 1.1502-75(d)(3)(i). That regulation applies where one corporation acquires the assets of a second corporation, and the shareholders of the second corporation have more than 50% of the value of the stock of the acquiring corporation immediately after, and as a result of, the acquisition. The regulation provides that the second corporation's affiliated group is deemed to continue in existence, with the acquiring corporation as the new common parent. Southern Pacific involved a reverse acquisition in which the old common parent went out of existence as a corporation. The Tax Court held that under the circumstances the new common parent automatically became the common parent for pre-reorganization years as well as for future years. Tax Litigation Division interprets this rule to apply to reverse acquisitions only where the old common parent goes out of existence as a corporation.

██████ was the common parent of the ██████ during the years under audit, and ██████ continues in existence today. Accordingly, under Reg. § 1.1502-77(a), ██████ continues to be the appropriate party to sign Forms 872 for the ██████ for the years under audit. This will be the case as long as ██████ continues to exist as a corporation. As an added measure of safety, you might wish also to obtain a Form 872 signed by ██████ if it is convenient to do so, but the crucial signatory is ██████.

The merger of ██████ and ██████'s temporary subsidiary was

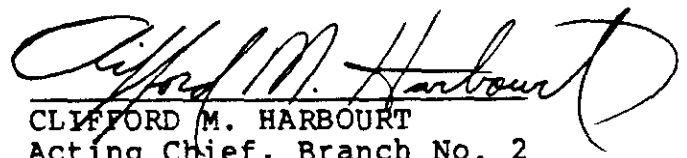
what is commonly called a reverse triangular merger. It was probably not, however, a reverse acquisition under Treas. Reg. § 1.1502-75(d)(3)(i). That regulation states that in a reverse acquisition the acquiring corporation becomes the new common parent for future years. [REDACTED] the company acquiring the assets in the merger, cannot become the common parent for future years, because [REDACTED] which now owns [REDACTED] must be the future common parent. 1/ Even if this were a reverse acquisition within the meaning of §Reg. 1.1502-77(a), moreover, the rule of Southern Pacific would not apply, because here the old common parent, [REDACTED], did not go out of existence in the merger.

CONCLUSION

[REDACTED] continues to be the appropriate party to sign the Forms 872 for pre-merger taxable years of the [REDACTED].

MARLENE GROSS

By:


CLIFFORD M. HARBOURT
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Tax Litigation Division

1/ [REDACTED] and [REDACTED] are both foreign corporations, and each own only [REDACTED] of [REDACTED]. Accordingly, neither [REDACTED] nor [REDACTED] can be the new common parent.